

R/6/30/10c

PROCEEDINGS

of a

MILITARY COURT FOR THE TRIAL OF WAR CRIMINALS

held at

THE WAR CRIMES COURT, HAMBURG

on

FRIDAY, 19th OCTOBER, 1945

upon the trial of

Kapitänleutnant HEINZ ROK

Lieutenant zur See AUGUST HOFFMANN

Marine Stabsarzt WALTER WEISSENBACH

Kapitänleutnant (Tas) HANS RICHARD LENZ

and Gefreiter SCHWABE

THIRD DAY

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Gefreiter SCHWENDER

PRESIDENT:

Brigadier C.I.V. Jones, CBE, Commander 106 AA Bde.

MEMBERS:

Brigadier R.M. Jarman, DSO MC  
Commodore D. Young-Jamieson, Royal Navy.  
Captain Sir Roy Gall, KBE, Royal Naval Reserve.  
Lieutenant-Colonel H.E. Piper, Royal Artillery.  
Captain E. Matpheos, Royal Hellenic Navy.  
Commander N.I. Sarris, Royal Hellenic Navy.

JUDGE ADVOCATE:

Major A. Melford Stevenson, KC, Deputy Judge Advocate  
Staff, Judge Advocate General's Office.

THIRD DAY

(At 1000 hours the Court reassembles pursuant to adjournment, the same President, members and Judge Advocate being present)

(The accused are again brought before the Court)

THE ACCUSED, KAPITANLEUTNANT ERNST ECK, is recalled on his former oath.

MAJOR LERMON: I propose to ask this witness a few questions. Dr. Pabst also wishes to ask the witness questions, but he thinks it will be more convenient for him to recall Eck later if that meets with the approval of the Court?

THE JUDGE ADVOCATE: No. An accused person is not ordinarily put in and out of the witness box in this way for his own benefit. It is a little hard on any accused person to be recalled more than once.

MAJOR LERMON: Yes, I appreciate that.

THE JUDGE ADVOCATE: It is much better that Dr. Pabst should put what he wants to put after you, and any other counsel concerned should put their questions then also.

Cross-examined by MAJOR LERMON:

Q You said yesterday that Lens objected to your order; is that right?  
A. Yes, that is true.

Q Can you tell us the words he used in objecting to your order? A. No, I cannot remember the words.

Q What did you reply to him? A. That in spite of his objections I wanted to eliminate the traces of the sinking.

Q Is it a serious offence to disobey an order on active operations? A. For not carrying out an order in face of the enemy one is punished with death.

Q Who can carry out that punishment? A. At sea the Commander has the right of doing that.

Q Is it true to say that on a U-boat which is on active operations a member of the crew is not confined merely to his specific tasks, but is also responsible for carrying out the tasks of any other member of the crew if necessary? A. Yes, on a U-boat the same as on all small vessels this is the case.

Q In your experience as a U-boat Commander was it usual to have your orders questioned? A. No, but it was usual for the Chief Engineer to have a conference about several points.

Cross-examined by DR. PABST:

Q You said yesterday that you had issued an order for shooting? A. Yes.

Q To whom did you issue this order? A. I gave it to Lieutenant Hoffmann, to Oberstabsarzt Weissfennig, and Leading Seaman Schwerder.

Q Did you also give an order to Lens and to Carlitz, the 1st Officer? A. No.

Q Do you remember that you said yesterday when the torpedoing happened it was completely dark? A. Yes.

Q Do you remember that you said that the moon came out afterwards? A. Yes.

Q Was the moon shining when Schwender was shooting ? A. Yes.

Q Did you have any secret orders of which the crew might not have had any knowledge ? A. Yes.

Q Did you hear the day before yesterday that the prosecutor said that officers and officers' batmen were among the accused ? A. Yes.

Q Is Schwender considered as an officer's batman ?

COL. HALSE: I never said "Officers' batmen".

THE JUDGE ADVOCATE: No. The prosecutor in opening said something about which there has been no evidence, that Schwender was a cadet or a prospective officer; he did not say anything about him being an officer's batman.

THE INTERPRETER: That is my translation.

DR. PAEST: Was Schwender fit to become an officer ? Did Schwender have the qualities to be in due course a petty officer or an officer ? A. To be a petty officer, yes.

Q You have heard from the statement of Lens that he took the weapon away from Schwender because he was a bad soldier ? A. As far as his service was concerned we had many complaints about him.

Q Did Schwender have any faults in his character ? A. He did not have the harshness and the determination which I judged necessary.

Q Has Schwender ever been punished disciplinarily ? A. I do not know.

Q Has Schwender ever disobeyed any of your orders before ? A. No.

Cross-examined by DR. WULF.

Q You have said before that you issued an order for firing to Hoffmann, Weisspennig and Schwender. Did you tell them in which order they had to fire ? A. No.

Q Who fired first ? A. As far as I can remember Weisspennig first, then when the weapon failed, Hoffmann.

Q What was the position of Hoffmann on board ? A. He was 2nd Officer of the watch, Artillery Officer and Wireless Officer.

Q You said yesterday that it was impossible to shoot at the rafts with cannon ? A. I have acquired the experience that you cannot score hits with cannon on such targets.

Q Did the Artillery Officer, Hoffmann, suggest to you that you might make use of the 5.7 cannon ? A. Yes, he suggested it to me, but I rejected his suggestion because a hit with a 5.7 cannon is not possible as the parallax is too great, that is to say the sight is sideways, too far away from the barrel.

Q For how many days did you go through the tropical zone before the sinking of the "Fleuret" ? A. About a fortnight.

Q You said yesterday that you were surfaced during the night and submerged during the day ? A. Yes.

Q When did the crew sleep ? A. Mainly during the periods of being submerged.

Q That is during daytime ? A. Yes.

Q Was it possible for the crew to sleep during the periods of being submerged ?  
A. That was very difficult because of the heat.

Q When was Hoffmann on watch during the day of the sinking ? A. From 12 to 4 as far as I can remember.

Q Was it particularly hot during that time on the bridge ? A. We were submerged during the day.

Cross-examined by PROFESSOR WEGNER:

Q Dr. Todsen asked you yesterday whether you spoke to the crew in slogans. We have translated the German word "Slagwort" by "slogans", but your reply is not quite clear to me. Will you tell me what you understand by "slogans" ? A. "Slogans" is not the proper expression.

Q "Catch-word", though not the proper word, would be better. "Slogan" is too much connected with propaganda. "Slagwort" means to put a thing as sharp as possible; sometimes we also say: "To speak in telegram style" ? A. It was my intention to make everything clear to the crew in short sentences, and that is why I chose an example which was to every member of the crew clear and understandable. That is why I gave the example of the air attacks in order to make clear to the crew that also with the enemy military reasons could lead to disregarding women and children.

DR. TODSEN: No re-examination.

THE JUDGE ADVOCATE: Did I understand you to say yesterday that the speed of your submarine on the surface was 5 knots ? A. It must have been about 5 knots as I was only running at slow speed on one engine.

Q What was its maximum speed ? A. 18 knots.

Q So that in an emergency you could have left the site of this sinking at a speed of 18 knots, could you not ? A. Yes.

Q I want to know a little more about the armament of this boat ? A. We had a 10.5 gun.

Q What else ? A. A 3.7 cannon, 2 centimetre twin machine cannons, and I believe four machine-guns.

Q Had you got on the boat any demolition charges ? A. Yes.

Q During a period of five hours you could have used demolition charges to break up rafts, could you not ? A. Yes, I thought of that.

Q Why did not you do it if you wanted to break up rafts ? A. On principle I did not want any member of the crew to leave the U-boat.

Q During the five hours that you were cruising about the site of the sinking were you running on your battery ? A. No.

Q On your engines ? A. Yes.

Q What was Schwender's action station ? A. In the bow, in the foremost part of the ship, serving the torpedo tubes.

Q Can you remember what were the words in which you expressed your fire orders ? A. No, I cannot remember them.

(The accused, Eck, leaves the place from which he has given his evidence)

DR. TODEK: May I have the Court's permission to call Mr. Moslop?

THE JUDGE ADVOCATE: You want him recalled?

DR. TODEK: Yes.

THE JUDGE ADVOCATE: Very well; you can continue to cross-examine Mr. Moslop.

MR. J.C. MOSLOP is recalled on his former oath and is further cross-examined by DR. TODEK as follows:

Q How did the air reconnaissance in the South Atlantic compare with that in the North Atlantic? A. Air reconnaissance in the North Atlantic was very much more intense than in the South Atlantic.

Q Then you suspected the presence of a U-boat in the South Atlantic was it then possible to reinforce the air reconnaissance? A. It was possible to put on a medium effort of five or six aircraft always airborne between Ascension and Freetown. That was a maximum effort which could not be maintained for a long period.

Q Were there any aircraft-carriers in this area between Freetown and Ascension? A. I do not know in the period in question, but they operated there from time to time.

Q Do you know anything of the case of Hartenstein? A. Yes.

Q Could you tell me what you know about that case? A. So far as I know Hartenstein was the Captain of a U-boat which torpedoed the liner "Laconia" in 1942 off West Africa. When the "Laconia" sunk the U-boat heard Italians calling in the water, and it was later ascertained by the U-boat that the liner had been carrying more than 1500 Italian prisoners of war, a Polish guard and some English passengers, including women. When the U-boat ascertained this it reported the sinking to B.D.U. and started efforts to rescue the survivors by summoning other U-boats to take survivors on board and to tow the ship's boats towards a rendezvous with a French cruiser. The U-boat commanded by Hartenstein was towing some boat-loads of survivors when it was sighted by an Allied aircraft. The U-boat is stated to have been carrying red crosses. The Allied plane is stated to have circled the U-boat and then dropped depth charges on it. The U-boat then cast off the boats, reported the damage which I do not think was serious, and reported the matter to B.D.U., who immediately issued instructions for rescue operations to be abandoned by U-boats.

Q I think that was a most correct report from what we know ourselves. A. As a result of this incident B.D.U. issued instructions as follows: "No attempt of any kind should be made at rescuing numbers of ships sunk, and this includes picking up persons in the water and putting them in lifeboats, righting capsized lifeboats, and handing over food and water. Rescue runs counter to the rudimentary demands of warfare for the destruction of enemy ships and crews. Orders for bringing Captains and Chief Engineers still apply. Rescue the shipwrecked only if their statements will be of importance for your boat. Be harsh, having in mind that the enemy takes no regard of women and children in his bombing attacks on German cities".

THE JUDGE ADVOCATE: Do any of the other defending counsel wish to put questions to this witness?

(All the defending counsel reply "No")

(The witness withdraws)

CAPTAIN SCHNEE is called in, and having been duly sworn, is examined by DR. TUE JEW in German, his evidence being translated by the interpreter as follows :

Q What is your name and rank ? A. Schnee, Captain.

Q What rank did you have during the war ? A. At the outbreak of the war I was officer of the watch to Captain Lohsmark. I was, after that, commander of four submarines, and in between I was on the U-boat staff in Berlin for one and three-quarter years.

Q What decorations did you get ? A. I received the Oak Leaf of the Iron Cross.

Q How many patrols were you on ? A. Sixteen patrols against the enemy.

Q In which areas did you operate ? A. In the first instance I operated in convoy in the North Atlantic, and secondly in single combat in the area of Freetown.

Q When did you go to the staff of the U-boat command ? A. In October 1942 I joined the staff of the B.D.U.

Q What kind of job did you occupy there ? A. In the first place I had to arrange convoy duties, and then I had to correlate the reports of the returning Commanders. It was also my duty to instruct the outgoing Commanders of submarines.

Q Did you give any instructions to Rok before he left ? A. Yes, I gave instructions to Rok in Berlin before he left.

Q In what points did you instruct him ? A. The U-boat Commanders were told the present situation in the areas they were going to and the execution of their duties generally.

Q What did you tell him about the situation in the South Atlantic area ? A. I pointed out to Rok that the situation in this particular zone was very difficult for us. In the month previous, prior to the happening of Rok, all boats of this type had been lost. U-boat 352 commanded by Commander Rok was one of a series of boats which started at No. 347. U-boats 347, 348, 349 and 350, all of which were recently built, left in that particular order against the enemy. All these boats were destroyed in the South Atlantic prior to the incident of Rok. This was very peculiar indeed as all these boats were manned by the most experienced Commanders. Most of them were holders of the Oak Leaf or the Iron Cross, famous names such as Kupisch, Oldmann and Schulz. We explained the destruction of these boats in that particular zone for two reasons. The first reason being that this particular type of U-boat was the biggest of the German U-boat fleet, and consequently the heaviest and slowest, and therefore the easiest to hit, the most vulnerable. The second reason was that it was well known to us that there was strong aircraft cover between the area of Freetown and Ascension. It was also well known to us that these airbases were in connection with aircraft-carriers, and so they were able to chase submarines until they could destroy them. I therefore told Rok to be very careful in this region on account of these grounds.

Q In your opinion was the danger to the U-boat already grave even if the presence of the boat was not known to the enemy as yet ? A. According to our opinion the danger for the U-boat was not as great in the South Atlantic as in the North Atlantic, but once the presence of the boat was detected in these waters, then aircraft defence had the opportunity as it was the only boat in the vicinity to follow it up with all their power and to destroy it.

Q What possibilities did Rok have to avoid a spotting of his boat by the

enemy ? A. Eck had the opportunity in daytime to protect himself by particularly good and constant look-out and with his W.T. transmitters and various apparatus he had the opportunity in bad weather and at night to detect any possible enemy approaching. He could then submerge in good time and did not have to leave any traces of his presence.

Q At that particular stage how would the traces of the sunken ship appear to him ? A. The traces of the sunken ship would be recognisable for the next few days and could be recognised by a plane.

Q What could he as the Commander of the U-boat do to eliminate this danger ? A. He could try to destroy and sink all bigger pieces of wreckage below the surface.

Q It was pointed out by the Court yesterday that after the sinking of a ship there would always be traces of oil which could not be wiped out. What is your opinion on that point ? A. After the sinking of an oil steamer a great area of water will be covered with oil. However, one can find on routes occasionally smaller patches of oil which do not necessarily suggest the sinking of a ship; they also occur from the cleaning of bilges.

Q If the s.s. "Eleus" had been a coal burning steamer, of which I am not sure, would there have been a large trace of oil left ? A. No, not in my opinion.

Q But a smaller patch of oil would have been left ? A. A small patch of oil may be left, but the cause may be another than a sinking, as I pointed out before.

Q The Court asked the following question yesterday: Would it not have been more advisable for Eck, instead of wasting time in destroying wreckage, to take advantage of the night to leave the spot of the sinking. What is your opinion on this point ? A. In my opinion it was the wrong thing to do. In the best possible conditions the boat can only cover a distance of about 150 sea miles during the night. For air reconnaissance this distance is of no importance, and the boat would have still been within the area of operations by the enemy the next day.

Q If you had been on Eck's boat, and it was your intention to sink rafts, which weapons would you have chosen to destroy them ? A. In this particular case the only weapon possible is the machine-gun, as the hitting of a flat target such as a raft presents is a very difficult thing from a U-boat. With a machine-gun the aimer has got the possibility of spraying his bullets and hitting the target. Besides that, a raft which consists of several hollow chambers and barrels can only be destroyed in that manner.

Q Would it not have been preferable to have used some demolition charges ? A. No, not in my opinion.

Q What do you think about using the cannon which was on board ? A. As I have stated just now, it was too difficult to get an exact aim from the platform of the U-boat, which is not stable.

Q As we have heard from the evidence, Eck had been on his way from the 16th January to the 15th March. He had passed through the North Atlantic and come into the area of Freetown and Ascension. Having regard to your experience as a U-boat Commander, what can you say as to the strain on the crew and Commander of such a trip ? A. The strain on the U-boat crew, and in particular on the Commander, who is practically all the time under water with his boat and can only come up every night for a short time to re-charge, is very great indeed. That on the first account depends on the small and cramped living conditions in the submarine, also on account of the very bad air conditions which is due to the continual submerged condition of the submarine. When a boat of this description has left the home port to go to the South Atlantic for more than two months, then it is quite probable that the health and the morale of the crew and Commander are pretty low. In addition you must consider the strain of the tropics where there is a temperature of 40 degrees in this boat. I can fully realise that the Commander after such a journey may possibly lose his head.

Cross-examined by Colonel HALSE.

Q You have been a U Boat commander yourself ?  
A. I had four different U Boats during the war.

Q Have you sunk many Allied ships ? A. Yes.

Q How many ? A. About 30.

Q Was that while you were in convoy or while you were by yourself ?  
A. Most of them were sunk in convoy.

Q Did you sink any while you were alone ? A. Yes.

Q What did you do after the sinking of the ships when you were alone ?  
A. I have always tried to get away as quickly as possible out of the danger zone because it is well known that after the sinking of a ship the defence of the enemy is at its most alert position.

Q Is that in your opinion the correct thing to do after you have sunk a ship ?  
A. That is according to my opinion the most important thing that matters to my boat.

Q Is that better than destroying the wreckage ? A. In the area in which I was mostly operating, the North Atlantic, floating wreckage did not greatly matter.

Q Why was that ? A. Because there were so many U Boats in the North Atlantic which were partly operating in groups that the actual presence of U Boats was quite well known to the enemy, compared with the zone where Captain Eok's sinking of the ship took place.

DR. TODSEN: I think that was not translated in the right way.

THE JUDGE ADVOCATE: Let us have his answer again.

A. A sinking in the South Atlantic would bring different reactions to a sinking in the North Atlantic.

THE JUDGE ADVOCATE: Circumstances differ as between the North and South Atlantic when a ship is sunk by a U Boat; that is it, is it not ?

DR. TODSEN: Yes.

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COL. HALSE: What would you have done as an experienced U Boat commander if you were in Eok's position ?

MAJOR LERON: In my submission the witness ought to be warned that he need not answer that particular question as it might incriminate him. I do not think Dr. Todsens realises the position.

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THE JUDGE ADVOCATE: I am not so sure that this witness does enjoy that privilege. (To the witness): You can refuse to answer a question if you think it might expose you to prosecution for a war crime.

COL. HALSE: As an experienced U Boat commander, what would you have done if you were in Eok's position on the night of the 15th March ?  
A. I do not know this case well enough to give an answer.

THE JUDGE ADVOCATE: Come; you can do a little better than that. You know the circumstances of this case, do you not ? You have been giving evidence about them ? (The witness replies in German which is not translated.)

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Q You have dealt in great detail with the propriety of leaving the site of the sinking, have you not ? (The witness replies in German which is not translated.)

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Q [You were asked what would you have done if you had been the commander of U 852 and had just sunk the "Peleus" ?  
A. It is very difficult for me to give an answer to that.

Q Would you try ? A. Now that the war is over "I cannot possibly put myself in such a difficult position as Captain Eck was at that time.

Q The fact that the war is over has not deprived you of your imagination, has it ? Just answer Yes or No. A. No.

Q What would you have done if you had been in Eck's position ?  
A. I would under all circumstances have tried my best to save lives, as that is a measure which was taken by all U Boat commanders; but when I hear of this case, then I can only explain it as this, that Captain Eck through the terrific experience he had been through lost his nerves.

Q Does that mean that you would not have done what Captain Eck did if you had kept your nerve ? A. I would not have done it.] 105

COL. HALSE: Did you receive any reports from Eck at B.D.U. ?

A. I cannot remember that because I cannot possibly remember all the messages which came through at that time.

Q Four submarines on the same task had been lost ? A. Yes.

Q In this area ? A. We only knew that four submarines were sunk in the South Atlantic, we do not know the exact spots, we only know of one, that is Commander Woldmann whose boat was sunk by aircraft.

Q But you were interested in this U Boat, the fifth of its class to go out ?  
A. Yes, I was interested in it.

Q Did not reports come in from it and did not you watch its movements ?  
A. The first I heard of this case was from the papers after I had read that Eck was in London for a court.

Q When was that ? A. About two months ago.

106 Q Have you heard of any other U Boat commander who has done the same thing as Eck did in this case ? A. No, I have not.

|| Q Did B.D.U. approve of the killing of survivors ? A. No, it did not approve, not at the time when I was a member of the staff of B.D.U.

Q You were on the staff of B.D.U. in March 1944 ? A. Yes.

Q Were orders issued that survivors were not to be killed ?  
A. It was not necessary because this order had already been issued at the outbreak of war.] 106

Re-examined by Dr. TODD.

Q You mentioned before that you sank ships partly in convoy and partly on your own. When did you sink ships on your own ? A. The summer of 1942.

Q Were the conditions then as difficult as in 1944 ? A. No, things were not difficult at that time; difficulties only started to arise in the middle of 1943.

Q If you had been in Eck's position would you have destroyed wreckage ?  
A. Yes.

THE JUDGE ADVOCATE: Have you ever seen a raft destroyed by machine gun fire ?  
A. No, I have not seen that.

Q Have you ever tried to do it yourself ? A. No, I have not done it, but I only know that the hitting of a single cell would not be sufficient to sink a raft; the same applies to any lifeboat.

DR. PABST: May I ask a question or two ?

THE JUDGE ADVOCATE: Yes.

Cross-examined by Dr. PABST.

Q What experience have you had as far as discipline is concerned on U Boats ? A. It is a fact that the discipline on U Boats was very good.

Q Have you personally ever experienced the disobedience of any order on any of your boats ? A. No.

Q Have you ever heard of any disobedience of orders on German U Boats ? A. No.

Q How would you have enforced any disobedience on a U Boat ? A. If the boat itself is endangered by a disobedience one has to make use of arms.

DR. TODSEN: "Endangered" was not the right translation.

A. When the capability, the full fighting force of the boat was in danger, then one had to use arms.

THE JUDGE ADVOCATE: Do any of the other defending counsel wish to ask any questions ?

MAJOR LERMON: No questions.

Cross-examined by Dr. WILF.

Q Did commanders of U Boats receive any secret orders which they were not to tell their crew or their officers ? A. There were different types of orders on a U Boat. There were those stated as secret and there were very secret orders. All orders were only allowed to be looked at by officers.

Q Were there any orders which were not even permitted to be looked at by officers ? A. There was only one order issued when leaving port which was handed directly to the captain of the U Boat, which was the course of the submarine, which might only be shared by one more officer who might take over in case something happened to the captain.

PROFESSOR WEGNER: No questions.

(The witness withdrew.)

(At 1130 hours the Court is closed.)

(At 1140 hours the Court re-opens.)

(The Accused are again brought before the Court.)

THE JUDGE ADVOCATE: As regards final speeches for the Accused, you would like to make them at the end of all the evidence ?

MAJOR LERMON: Yes.

THE JUDGE ADVOCATE: Now we have to deal with Hoffmann. You are appearing for Hoffmann, Dr. Pabst, are you not ?

DR. PABST: Yes.

THE JUDGE ADVOCATE: Do you wish to open your case ?

DR. PABST: Yes.

(Dr. PABST addresses the Court in German and his address is translated by the interpreter as follows:)

DR. PABST: For Lieutenant Hoffmann, Oberstabsarzt Weisappennig and Gefreiter Schmidbauer the defense wishes to say the following.

THE JUDGE ADVOCATE: Is this the opening of the defense of those three Accused?

DR. PABST: Yes. The Accused did not want to shoot at human beings; in their action they were lacking forethought, they were acting on orders. They did not realize and could not realize that this order would involve a punishable offence; and not carrying out that order would have brought them into imminent danger of life themselves. Schmidbauer did not kill any people and did not want to kill any. The prima facie evidence proved against him shall be disproved. The Accused wish to prove these statements through their own evidence and the evidence of Kapitänleutnant Lanz. Now I will call Hoffmann.

MAJOR LERMON: Dr. Wulf, who is also appearing for Hoffmann, has indicated to me that he would like to say a few words before Hoffmann goes into the witness-box.

THE JUDGE ADVOCATE: My original list showing who represented who in this case seems in the last two days to have become inaccurate. I do not quite follow what the representation now is. We know that Dr. Toonen is appearing for Bok and you are appearing for Lanz?

MAJOR LERMON: Yes. Dr. Wulf appears for Hoffmann alone and for no other Accused.

DR. WULF: Together with Dr. Pabst. Dr. Pabst and I defend Hoffmann together, and I specially as to his character. I have three witnesses as to the character of Hoffmann.

THE JUDGE ADVOCATE: Who appears for Schmidbauer?

MAJOR LERMON: Dr. Pabst alone appears for Schmidbauer and Weisappennig.

THE JUDGE ADVOCATE: I do not think we can have two opening speeches for one Accused.

THE ACCUSED Lieutenant sur See ARKUSI HOFFMANN takes his place at the witness-stand, and, having been duly sworn, is examined by DR. PABST in German, his evidence being translated by the interpreter as follows: -

Q What is your name and rank? A. August Hoffmann, Lieutenant sur See.

Q What was your age when you joined the Navy? A. 13 years.

Q How long were you with the Navy until your capture? A. I joined in October 1940 and I was taken prisoner on the 3rd May 1944.

Q What training did you receive with regard to disobedience and its consequences? A. I have learned that when facing the enemy there was no such thing as disobedience and that it would be punished by death.

Q What was your age when the incident in question occurred? A. 21.

Q At what time was the ship torpedoed? A. The ship was torpedoed between 2030 and 2100 hours on the 13th March.

Q For how long did your boat stay in the vicinity of the sinking after the incident? A. Shortly after midnight the Commander gave orders to leave.

Q Did you shoot ? A. Yes, I did fire.

Q At what ? A. I fired at rafts.

Q Why did you fire ? A. Because I had received orders.

Q Who gave those orders ? A. The Commandant gave those orders.

Q Was this order issued to you directly ? A. Yes.

Q In what way was the order formulated ? A. I cannot remember the exact words any longer; the Commandant stood close beside me.

Q Did you have to obey the orders of the Commandant ? A. Yes.

Q Why did you have to carry out the orders ? A. Because the boat was in great danger and the Commandant could enforce the carrying out of his order by force of arms.

Q Was it known to you that through carrying out the order you might commit a punishable offence ? A. No.

Q What purpose did the order have in your opinion ? A. The order had the purpose to eliminate all traces of the sinking as much as possible.

Q Did you hesitate in any way before carrying out the order ? A. No, I had complete trust in the Commandant of whom I knew that he had been at the front ever since war broke out.

Q How many voyages on active service did you take part in ? A. This was my first voyage on active service.

Q Was the "Peleus" the first boat that was sunk by you ? A. Yes.

Q Was it known to you that the Commandant had secret orders which he could not tell you about ? A. Yes.

Q In your action were you quite calm or were you excited ? A. The sinking of the "Peleus" was the end of a long training and a long voyage on active service and I was rather excited.

Q What did you think of your commandant with regard to his character and his qualities as a superior ? A. He was an example.

DR. WULF: I want to ask you -----

THE JUDGE ADVOCATE: On whose behalf are you proposing to ask questions ?

DR. WULF: On behalf of Hoffmann.

THE JUDGE ADVOCATE: The usual course is to have one advocate for each Accused and for the whole of his evidence to be given at one time. I do not think we can allow several advocates for the same Accused to examine him. I think if you want to put questions to Hoffmann you must put them through Dr. Pabst.

DR. WULF: Then I must speak to Dr. Pabst.

THE JUDGE ADVOCATE: Yes, certainly.

DR. PABST: Did Kapitanleutnant Eck tell you the reason for his order ? A. I know that the Captain gave the reason for his order but not while I was present.

Q What kind of weapons were fired first ? A. First with an M.G. 15.

Q Who fired it ? A. The Doctor.

Q Did you believe him at the firing ? A. Yes.

Q How long was he firing ? A. Only a short while.

Q Why did he stop firing ? A. The M.G. suddenly stopped firing; there was a stoppage in the machine gun.

Q When were the weapons brought on deck, before the examination or after ? A. At first there was only one M.G. brought on the bridge. This one was brought on the bridge either during the examination of the men of the "Peleus" or shortly after.

Q Was an artillery officer on board ? A. I had the responsibility for all the artillery weapons on board.

Q Did you suggest that the 3.7 cannon should be used ? A. Yes, I made a suggestion to the Commandant as I saw that we could not sink the rafts with an M.G. The Commandant however said that that was not possible, I should try with a 2 centimetre one. I tried but it had no result and we immediately stopped it.

Q On that day when did you do guard ? A. My guard was from mid-day, 12 o'clock, till 4 o'clock in the afternoon. At 5 o'clock, after the sighting of the ship, I had to go on the bridge again. I did not leave the bridge again until shortly before midnight. About 1 o'clock I went on guard again.

Q On account of that were you physically exhausted ? A. That is possible, but I did not feel anything.

Q Was it known to you that on the same route several boats had been lost before ? A. It was known to all that all the boats which had left the previous six months had been lost with the exception of one.

Q How long did the firing at the boat last ? A. The firing at the boats was stopped afterwards because it showed no results and we used hand grenades.

Q Were there any boats at all ? A. There were rafts there; I did not notice any boats.

Q Did you see the rafts ? A. Immediately after the sinking that raft had lights; the lights were put out after a while; after that I only saw rafts which were very close to the boat.

DR. PARST: May I ask questions about character now ? It is usual after the verdict, I believe.

THE JUDGE ADVOCATE: The position is that if you want to produce evidence of character now you can do so. It would actually expose him to cross-examination about his bad character, but in this case that will not arise because I do not suppose the Prosecution know anything about his character from that point of view. If you want to do it you are entitled to make use of it now, if you think it helps. It is entirely for you to decide.

DR. PARST: It is not permitted that Dr. Wulf asks these questions, because he knows the persons better than I do ?

THE JUDGE ADVOCATE: If it will take less time it is probably better for Dr. Wulf to do it.

Examined by Dr. WULF.

Q When were you born ? A. On the 4th June 1922.

Q How old are you today ? A. 23 years.

Q Where were you born ? A. In Hamburg.

Q What was your father ? A. Before the Great War my father was an officer in the Merchant Navy.

Q Now what is he ? A. A merchant.

Q What was the profession of your mother before marriage ? A. She was a teacher.

Q Are you parents in a Church ? A. Yes.

Q Do you belong to any Church ? A. Yes.

Q In what direction did your education through your parents take place ? A. Non-political but national.

COL. HALSE: I do not know if it will help Dr. Wulf, but I have got nothing to bring against Hoffmann's character.

THE JUDGE ADVOCATE: Dr. Wulf, will you try to confine it to what is relevant to this case ? The occupation of this man's mother has very little to do with what the Court has to decide, has it ?

DR. WULF: Why did you make up your mind to go to sea ?

A. I made that decision when I was a small boy. The decision to go in the Navy I made on account of the war and the example of a relation.

Q Not also through the example of your father ? A. He was in the Merchant Navy.

Q What example of a relative did you have ? A. My cousin was the commander of a U Boat.

THE JUDGE ADVOCATE: This Court is perfectly prepared to assume that this is a man of good character apart from the matter which the Court is now investigating. I should like you to consider whether you think it is necessary to go into a lot of detail about his history, particularly at this point.

DR. WULF: Then I have no more questions to ask this witness.

THE JUDGE ADVOCATE: Do any of the advocates representing other accused wish to question him ?

Cross-examined by Dr. TOLDSEN.

Q After the examination of the Greek had been completed did you at any time hear that another raft was called to the boat ? A. No.

Q Did you at any time hear any member of the crew call out: "Kill them all" ? A. I was on the bridge the whole time and heard nothing; I would have heard it.

Cross-examined by Major LERNON.

Q Were you present when Kapitanleutnant Lens objected to the Commander's order to eliminate all trace of the sinking ? A. I was not present.

Cross-examined by Colonel HALSE.

Q You told us that when the ship was sunk the Rafts had lights on them ?  
A. Yes.

Q The lights later went out ? A. Yes.

Q When did they go out ? A. When we called them.

Q What did you call them ? A. The lights went out at our orders.

Q Orders were given that the lights on the rafts should be put out ?  
A. Yes.

Q You knew then that there were people on each raft ?  
A. We had to assume that.

Q You fired at the rafts ? A. Yes.

Q Knowing there were people on them ? A. No.

Q How then were the lights put out ?  
A. By the people who were on the rafts in the first place originally.

Q Where had they gone between the time the lights were put out and the time you started to fire ?  
A. I thought they jumped into the water.

Q Did you think that it was humane to fire at rafts where people might be ?  
A. I did not think anything; as soon as I received the orders I fired.

Q Disregarding the order which you received, do you think it was right to fire at people in the water or on rafts ?  
A. I did not quite understand that. (The question is repeated by the interpreter.) Now I am sitting here I do not think that it was right to fire at helpless people in the water or sitting on rafts in the water, but at that time I did not think so.

Q You were present during the interrogation, were you not ?  
A. Yes.

Q Did you tell the officer who came on board that he would be picked up the next day by the British ?  
A. Yes. At that stage I did not know that it was intended to fire at the rafts.

Q You used hand grenades yourself ?  
A. Yes.

Q Did the hand grenades hit the rafts ?  
A. Yes.

Q The rafts must have been very close to the U Boat then ?  
A. Yes, they were.

Q How close ? A. Not further than 10 metres away.

Q On a moonlight night ? A. There was a little moonlight.

Q Could you see the rafts quite clearly ?  
A. Yes, quite clearly.

Q Did you see any bodies on the rafts ? A. At that time I was convinced there was nobody on board.

THE JUDGE ADVOCATE: Answer the question. Did you see any bodies on the rafts ?

A. No.

Q Did you see no human beings ?

A. No human beings.

Q Why not, do you think ?

A. I thought they might have jumped into the water before.

Q Why should they have done that ?

A. Because there was firing at the rafts.

Q Did you see any survivors in the water ?

A. No.

Q None at all ?

A. None.

Q Did you hear Lieutenant Lens protest about the order to fire ?

A. Yes, I heard it, but I was standing too far away to understand the exact wording.

Q But you knew then that it was a protest ?

A. I knew Kapitanleutnant Lens and expected it.

Q When you heard what you thought was a protest being made did it occur to you to wonder whether what you were doing was right or wrong ?

A. No, I did not think about it, because at the same moment the Stabsarzt went to the M.G. and started firing. I believed that I could have stayed clear of the matter.

Q Why did you want to stay clear of the matter ?

A. I had spoken to one of the survivors before and I had pity on him and I had told him that they would be saved the following day and I did not want to shoot at them.

Q If those thoughts had passed through your mind at the time it was quite clear to you then that what you were doing was wrong, was it not ? Answer Yes or No. A. No.

(The witness withdraws.)

(At 1230 hours the Court is closed.)

(At 1415 hours the court re-opens)

The Accused are again brought before the court.

THE JUDGE ADVOCATE: Dr. Pabst, I ought to have given you an opportunity to re-examine Hoffmann.

The Accused HOFFMANN resumes his place at the witness-stand, and is re-examined by DR. PABST as follows:

Q You said this morning that you had seen lights on the rafts. How many lights did you see? A. Two or three.

Q You said this morning that an order had been given to put out the lights. Why had that order been given? A. So as not to disclose the location of the boat to enemy aeroplanes.

Q At that time did you send wireless messages? A. The message about the sinking of the boat was only transmitted by wireless three weeks later, in order not to disclose it to the enemy.

Q This morning you said: "Now, as I am sitting here, I realise that what had happened was wrong". Why did not you think so at the time? A. It all happened much too quickly, and I was too excited. It was my first sinking.

Q You said this morning: "I was glad that I could keep away from the matter because I had pity on the man". Why, despite that, did you fire? A. I had orders, and I could not make myself guilty of disobedience before the enemy and my own crew; and apart from that I had complete trust in the commandant and the righteousness of his orders. I also knew that he had orders and instructions of a secret nature which were not known to me. I thought that the order was necessary on military grounds.

THE JUDGE ADVOCATE: You told the court this morning that you took over a machine gun from Dr. Weissfennig? A. Yes.

Q Had you received any direct order from the commandant up to that time? A. No.

Q Did you receive any order from Dr. Weissfennig? A. No.

Q Why did you take over the machine gun from Weissfennig? A. Because I had received a direct order from the commandant.

Q From the commandant? A. Yes.

Q When you took over that machine gun was it working? A. There was a stoppage -- a defect.

Q Did you put it in order? A. Yes.

Q And, having put it in order, did you continue to fire? A. Yes.

Q Did the orders which you received directly from the commandant provide for putting it in order? A. No.

Q So you did that on your own initiative, did you? A. Yes.

(The Accused HOFFMANN leaves the place from which he has given his evidence).

DR. PABST: That concludes the defence for Hoffmann, and now I call Weissfennig.

THE JUDGE ADVOCATE: Yes.

The Accused, Oberstabsarzt WALTER WEISSPFENNIG, takes his stand at the place from which the other witnesses have given their evidence, and, having been duly sworn, is examined by Dr. PARSI through the interpreter as follows:-

Q What is your name and rank ? A. Walter Weisspfennig, Oberstabsarzt.

Q Did you shoot on the day in question ? A. Yes.

Q Did you throw hand grenades ? A. No.

Q During what period did you shoot ? A. It was very short; there was a stoppage with the machine gun.

Q What did you aim at ? A. At a bigger piece of wreckage.

Q Did you see people ? A. No.

Q What was the distance between you and the piece of wreckage ? A. I can only tell you approximately; about 200 metres.

Q Why did you shoot ? A. I got an order from the commandant.

Q What was the wording of the order ? A. The wording of the order was: "You shoot".

Q Was this order issued to you directly ? A. Yes.

Q Did you have to execute this order ? A. Yes.

Q Why did you have to execute this order ? A. It was an order, it was during an action of battle, I had known the commander for a long period, and I did not have the impression that he would issue a wrong command to me.

Q Did you know that this order desired you to do something which was not permitted ? A. No.

Q Which purpose did the order serve in your opinion ? A. To eliminate the traces of the ship.

Q Have you heard about the objections which Lens brought before the commander ? A. No.

Q How many active operations have you been in ? A. It was the first one.

Q Was the vessel the first ship you had sunk ? A. Yes.

Q Did the commander give you any explanation why there should be any firing ? A. I cannot remember the wording.

Q Did you know that the commander had secret orders, which were unknown to you ? A. Yes.

Q Were you excited or quiet during the shooting ? A. Everybody was excited.

Q Why ? A. It was the first vessel.

Q What did you think about the commander as far as character and his qualities as a commander were concerned ? A. I knew the commander as a quiet, safe superior, who had been on such a post for a long period already.

Q Did you have any previous punishments ? A. No.

Cross-examined by DR. TOLSEN.

Q After the Greeks had been interrogated on the U-boat did you hear that any

raft had been hailed ? A. No.

Q Did you hear at any time that "Kill them all" had been called ? A. No.

Q Were you able to notice how many times a signal lamp was used ? A. No.

THE JUDGE ADVOCATE: In the German Navy are there regulations about the conduct of medical officers ? A. Yes.

Q Do those regulations forbid medical officers to use weapons for offensive purposes ? A. Yes.

Q Why on this occasion did you disregard those regulations ? A. I got an order from the commander.

Cross-examined by COL. HAISE.

Q Do your regulations provide that you can refuse to obey an order which is against the Geneva Convention ? A. I do not know.

Q You know what the Geneva Convention is, do you not ? A. Yes.

Q Is not one of the reasons why you are given protection as a doctor because you are a non-combatant ? A. It is not a question.

Q That is the question I am asking you.

THE JUDGE ADVOCATE: Just put the question again.

COL. HAISE: Is not one of the reasons why you are given protection as a doctor because you are a non-combatant ? A. Yes.

Q Did you know that there were people on the rafts at which you were shooting ? A. No.

Q Did you see any people come from the rafts to the U-boat ? A. No.

Q Did you know that some men had come from the rafts to the U-boat ? A. I know that they have been on the boat.

Q Where did they go to when they left the boat ? A. I did not see it.

Q Where do you think they went to ? A. I did not think about it.

Q Did you realize that there were some survivors ? A. Yes.

Q And the most likely place for them to be would be on the rafts and the wreckage ? A. That impossible.

Q And that was the wreckage that you fired on ? A. Yes.

Q How long have you been in the Navy as a doctor ? A. Since 1936.

Q Have you been in action before ? A. No.

Q Who was on the bridge when you were firing the gun ? A. The bridge watch.

Q Who was that ? A. I do not know any longer -- the commandant, the first officer of the watch -----

Q Who was that ? A. Lieutenant Kolditz, and afterwards Lieutenant Hoffmann.

Q Were the machine guns on the bridge when you arrived on the bridge, or were you there before ? A. They were just being brought up.

Q Did you hear Kolditz object to the order of the commander ? A. No.

Q Yet he was close to you on the bridge ? A. I was standing behind a telescope.

Q How far away were you from the captain and Holdts ? A. From 4 to 5 inches.

Q And yet you heard nothing of what was said ? A. No, I cannot remember it.

Q Were there other combatant officers on the bridge ? A. Only the commander and Lieutenant Holdts were on the bridge.

Q Why did not you suggest to Holdts that he should fire the gun and not you, a non-combatant ? A. I did receive a direct order.

Q You realized, did you not, that the order might result in you killing people ? A. No.

Q What did you think you were going to do when you shot ? A. There was no time for any consideration.

Q Did you see any lights on the raft ? A. No.

Q At no time ? A. No.

Q Were you on the bridge when the torpedoes were fired ? A. No.

Q Where were you ? A. In the boat.

Q And when did you come on to the bridge ? A. Afterwards.

Q At what time ? A. I cannot remember.

Q Was it before Lens and Hoffmann had interrogated the Greeks ? A. Yes.

Q We have heard that there were lights on the rafts then. A. I did not see them myself.

Q Did you hear any whistles blowing in the water ? A. Yes.

Q Did not you realize that those were being blown by survivors ? A. Yes.

Q Were those coming from the direction in which you were firing ? A. The boat was moving all the time.

Q But you had an idea where the whistles were coming from ? A. The boat made another sweep.

Q Did you know from which directions the whistles were coming ? A. No.

Q But those whistles indicated there were survivors ? A. Yes.

Q Did you enjoy firing the machine gun ? A. No.

Q Had you ever fired one before ? A. No.

Q You got no thrill from firing a gun for the first time in your life ? A. Everything was exciting.

Q Was it because you were enjoying the idea of firing that you fired at all ? A. No.

Re-organized by DR. PABST.

Q You said before that the rules about medical personnel said that you should not use any offensive weapon. Did you consider the use of the machine gun in this particular case as an offensive action ? A. No.

Q Why not ? A. Because it was not aimed at people.

Q What did you aim at then ? A. At bits of wreckage.

Q Had you been shooting at any rafts ? A. The distance was too great to find it out exactly.

(The Accused WEISSPFENNIG leaves the place from which he has given his evidence).

DR. PARST: That concludes the case for the defence of Weisspfennig.

THE JUDGE ADVOCATE: Then the next in order is Kapitanleutnant Lens.

MAJOR LERMON: I do not think I am entitled to make an opening address because I am not calling any other evidence apart from the accused.

THE JUDGE ADVOCATE: You have in fact lost the last word, have not you ?

MAJOR LERMON: I have indeed, yes.

THE JUDGE ADVOCATE: And you are, I imagine, taking such benefit as you can from the witnesses that have been called. If you want to open I am sure the court will let you.

MAJOR LERMON: May it please the court: The accused Kapitanleutnant Lens is a young man of 28 years of age. He comes of a good family. His father is a prosperous merchant, and his mother comes from a family of lawyers. He was born in Hannover, and since February of this year he has not heard of his parents, who were last heard of in Berlin in that month.

The accused went to school in Berlin, and after leaving school he joined the German Navy in 1936, being commissioned as an Engineer leutnant in 1938. He actually joined the U-boat arm in 1940, and became a chief engineer, and served on three U-boats in that capacity.

He has during the war carried out no less than seven war patrols, and has been decorated with the Iron Cross First and Second Class. He has never before been before any court, and has never before had any disciplinary action of any kind taken against him.

In a few moments Lens will go into the witness box and will tell you his story of what occurred during this fateful voyage of the U.582. You have already heard from other witnesses -- and this will be confirmed by Lens -- that he got to hear of the order of the commander, Eck, in the first instance not from Eck himself but from others who were talking about this order as Lens was coming up into the conning tower.

THE JUDGE ADVOCATE: Do you want this translated for the benefit of your client ?

MAJOR LERMON: I do not think so. He heard this discussion that was going on, and he came to the conclusion that he objected to this order, and you will hear in his own words why he objected to this order! He in fact remonstrated with the commander, Eck, and there and then Eck re-affirmed his decision to eliminate all traces of the sinking.

You have already been told that it is the unquestionable duty of all officers, petty officers and ratings on board ship to obey without question the orders of a superior officer, and the court will of course know that as being so of their military and naval knowledge.

You may well ask why it was that Lens, who disagreed with this order -- and there can be, I think, no doubt about that at all -- should have taken the gun from Schwender, who was already firing it, or about to fire it, in order to fire it himself -- if he was in disagreement with that order. I do not propose to say anything about that at the moment, because Lens himself will give you his own explanation in the witness box, and I think that when you

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have heard that explanation you will appreciate that it reflects no discredit on him.

I will also prove that Lens did not fire at any survivors, (he fired at wreckage), although he will tell you quite frankly that he realised that as a result of that firing survivors might be killed. He also realised quite clearly that if you destroy wreckage you also destroy the survivors only chance of survival. But what I am going to show you is that Lens himself had no intention whatsoever to kill any survivor.

I now propose to call Kapitanleutnant Lens.

The Accused, Kapitanleutnant (Ing, HANS RICHARD LENZ,  
takes his stand at the place from which the other  
witnesses have given their evidence, and, having been  
duly sworn, is examined by Major LERMON through the  
interpreter as follows:-

Q Are you Kapitanleutnant Hans Richard Lens ? A. Yes.

Q And were you born in Hannover in 1917 ? A. Yes.

Q During the war were your parents living in Berlin ? A. Yes.

Q When did you last hear of them ? A. In February of this year.

Q In 1936 did you leave school to go into the Navy ? A. At Christmas 1935 I passed my final examination, and in Spring 1936 I went to the Labour Service, and after that I entered the Navy.

Q Were you commissioned in 1938 as an Engineer-lieutenant ? A. Yes.

Q And I think you joined the U-boat arm in 1940 ? A. Yes.

Q And you have been chief engineer of three U-boats ? A. Yes.

Q How many war patrols have you carried out during the war ? A. Seven voyages on active service.

Q What decorations do you hold ? A. The Iron Cross Second and First Class, and the U-boat decoration.

Q Have you ever been before a court before ? A. No.

Q Have you ever had any disciplinary action taken against you ? A. No.

Q Do you remember the commissioning of the U.852 ? A. Yes.

Q And you sailed with her on her first patrol on the 18th January 1944 ? A. Yes.

Q You were the chief engineer on board her at that time ? A. Yes.

Q As chief engineer officer you would mostly be below deck; is that right ? A. Yes, as chief engineer I spent most of my time below deck.

Q As this was the first patrol of the U.852 did you have any special responsibility as the chief engineer ? A. As most of the crew were new on board and had not been used to active service, with my experience I had to see to most little things below deck, and also the discipline and the training of the crew below deck was in my hands.

Q As you had to stay below deck more than other people did you find it a greater strain ? A. Yes, it was a very great strain, especially when travelling in

a submerged condition and in tropical areas.

Q Do you remember the day of the 15th March, 1944 ? A. Yes.

Q Was the U.852 surfaced on that day ? A. Yes.

Q Where were you -- below deck or above deck ? A. Below.

Q Did you hear that a merchant vessel had been sighted ? A. Yes.

Q Did you come up on deck to see, or did you remain below ? A. I remained below.

Q What happened then ? A. We continued with increased speed and we sunk the ship after dark.

Q Did you come up on deck after the ship was sunk ? A. Some time after I came up on deck.

Q And did the commander say anything to you ? A. Yes.

Q What did he say ? A. The commandant ordered me to interrogate a survivor as I could speak English quite well.

Q How many survivors did you interrogate ? A. I interrogated one survivor.

Q Where did you interrogate him ? A. On the front part of the top deck.

Q And you learned from this survivor that the name of the sunk vessel was the "Peleus"; is that right ? A. Yes.

Q When you interrogated the survivor did you then know of any order by the commander to eliminate all trace of sinking ? A. No, I did not know anything about that.

Q What did you do after you had interrogated the survivor ? A. I returned to the bridge and I reported to the commandant what the survivor had told me.

Q Where did this happen ? A. On the bridge.

Q And what did you do then ? A. First of all, I heard that the commandant had decided to eliminate the traces of the ship by shooting at the traces, and therefore I concluded that the survivors would be hit by the bullets.

Q Where did you hear this ? A. I heard that from some remarks which had been made on the bridge or in the tower.

Q Do you know who made those remarks ? A. No, I cannot remember that any longer.

Q When you heard this what did you do ? A. I told the commandant that I did not agree with the execution of such an order.

Q Why did you not agree with the order ? A. Out of sympathy for the survivors.

Q What did the commander say when you told him you did not agree with his order ? A. He said that despite that he would have his order carried out.

Q Did the commander say anything to you about an intention to kill the survivors ? A. No, there was no talk of that.

Q After the commander had told you that all trace of the sinking must be eliminated what did you do ? A. I went below deck to take some notes of what the survivor had told me in the interrogation.

a submerged condition and in tropical areas.

Q Do you remember the day of the 13th March, 1944 ? A. Yes.

Q Was the U.852 surfaced on that day ? A. Yes.

Q Where were you -- below deck or above deck ? A. Below.

Q Did you hear that a merchant vessel had been sighted ? A. Yes.

Q Did you come up on deck to see, or did you remain below ? A. I remained below.

Q What happened then ? A. We continued with increased speed and we sunk the ship after dark.

Q Did you come up on deck after the ship was sunk ? A. Some time after I came up on deck.

Q And did the commander say anything to you ? A. Yes.

Q What did he say ? A. The commandant ordered me to interrogate a survivor as I could speak English quite well.

Q How many survivors did you interrogate ? A. I interrogated one survivor.

Q Where did you interrogate him ? A. On the front part of the top deck.

Q And you learned from this survivor that the name of the sunk vessel was the "Peleus"; is that right ? A. Yes.

Q When you interrogated the survivor did you then know of any order by the commander to eliminate all trace of sinking ? A. No, I did not know anything about that.

Q What did you do after you had interrogated the survivor ? A. I returned to the bridge and I reported to the commandant what the survivor had told me.

Q Where did this happen ? A. On the bridge.

Q And what did you do then ? A. First of all, I heard that the commandant had decided to eliminate the traces of the ship by shooting at the traces, and therefore I concluded that the survivors would be hit by the bullets.

Q Where did you hear this ? A. I heard that from some remarks which had been made on the bridge or in the tower.

Q Do you know who made those remarks ? A. No, I cannot remember that any longer.

Q When you heard this what did you do ? A. I told the commandant that I did not agree with the execution of such an order.

Q Why did you not agree with the order ? A. Out of sympathy for the survivors.

Q What did the commander say when you told him you did not agree with his order ? A. He said that despite that he would have his order carried out.

Q Did the commander say anything to you about an intention to kill the survivors ? A. No, there was no talk of that.

Q After the commander had told you that all trace of the sinking must be eliminated what did you do ? A. I went below deck to take some notes of what the survivor had told me in the interrogation.

Q Did you hear anything while you were there ? A. Yes, I heard machine gun shots.

Q And what did you do then ? A. I had to finish several jobs below deck. The torpedo tubes had to be re-filled; I had to adjust the trim continually so that the boat was ready to submerge at any time; I had furthermore to check up on the fillings.

Q And after you did that what did you do then ? A. It took a considerable time, and I then went up on to the bridge to find out why we did not move on.

Q Was it dark or fairly light when you went on to the bridge ? A. It was very dark.

Q Did you see any wreckage ? A. I saw a lot of beams and pieces of wreckage on the port side of the boat.

Q Did you see any rafts ? A. No, I did not.

Q Did you see any survivors ? A. No.

Q What happened next ? A. I heard from somebody that some shadow had been sighted on one of the pieces of wreckage which looked like a human shape.

Q Did you see this form which looked like a human shape yourself ? A. No.

Q Who was it who said they saw a form like a human shape ? A. I do not know that any more. Somehow it was said on the bridge.

Q Who did you see on the bridge ? A. The commandant. Who else was on the bridge I cannot remember any longer.

Q Did you stay on the bridge ? A. Yes.

Q And what happened then ? A. I looked back and I saw Matrosen Gefreiter Schwender with an MG to the port side, and he pointed the MG on to the pieces of wreckage. As I assumed because of that if somebody remained on the wreckage he might get killed, I went to the rear part of the bridge, where the MG was situated, pushed Schwender aside and took the MG into my own hands.

Q You remember that you told us before that you did not agree with the order of Commander Eck; is that not so ? A. Yes.

Q I want you to tell the court why, in that case, you took this machine gun from Schwender ? A. I thought that if Schwender fired on those pieces of wreckage a human being who I had spoken to a short while ago might be hit and killed, and I did not want that that man should be hit by bullets which a soldier who, in my eyes, was considered bad had fired.

THE JUDGE ADVOCATE: Will you repeat that, please ? A. I did not want that that human being should be hit and killed from bullets which had been fired from a soldier who in my view was bad.

MAJOR LERMON: Why did you think that Schwender was a bad soldier ? A. During the training in the first part of the voyage I had had much trouble with Schwender. I furthermore thought that at that time Schwender, through a wireless message which we had received, had had an illegitimate child, but later on it was found out that I had been wrong; but at that time I believed that.

Q As I understand it then, Lens, you were unwilling that if anybody could be hurt by the firing that person should be hurt by a bullet fired by an unsatisfactory man like Schwender ? A. Yes, those were the reasons.

Q Lens, are you normally a person of an excitable temperament ? A. Yes, I

early lose my temper. Apart from that, through the many voyages into enemy territory I easily lose my temper.

Q Do you consider it a serious thing not to carry out the orders of the commander of your ship when that ship is on active operations ? A. The orders of the commanding officer have to be carried out under any circumstances.

THE JUDGE ADVOCATE: Dr. Tidzen, do you want to put anything to this witness ?

DR. TÖRMÉN: No, thank you.

DR. PÄSSI: I have some questions.

Cross-examined by MR. PÄSSI.

Q Did you see Schwender fire ? A. No, I did not.

Q On the pieces of wood at which he aimed did you see somebody sitting ? A. I did not say that Schwender was aiming at one particular piece of wreckage.

Q Did Schwender ever show any disobedience towards you ? A. Refusal of obedience is not a proper expression.

Q But it is known to you what a refusal of obedience means ? A. Yes.

Q Answer my question: Did Schwender ever refuse to obey you ? A. No.

DR. TÖRMÉN: May I put some questions to the accused ?

THE JUDGE ADVOCATE: Yes.

Cross-examined by MR. TÖRMÉN.

Q Did you see any survivors on the pieces of wreckage at which you yourself were aiming ? A. No.

Q Did you fire with the intention to kill any survivor ? A. No, I wanted to hit the wreckage.

Q Were you able to watch the result of your fire ? A. No, that was not possible.

Q Did you hear at any time that anybody on deck called: "Kill them all" ? A. When I was on the top deck that was not called out.

Q Did you watch the signal lamp being put on ? A. No, I had only seen how it was prepared in the tower.

Q And then you went below ? A. That was in the tower, not on top.

Q Did you see the beams of the signal lamps showing across the water at any time ? A. No.

Q While you were in the tower, even without seeing the actual beams of the signal lamp, were you able to watch whether the signal lamp had been put on ?

A. To that I wish to explain that there are two switches, one in the tower and the other one directly on the signal lamp. I saw that the switch in the tower had been put on. The actual use of the lamp on the bridge I could not see from below.

Q When the switch was put on the light was on ? A. There are two switches and both have to be switched on.

Cross-examined by COL. HALSE.

Q Did you receive an order from Kok to fire at the wreckage ? A. No, I did not get a direct order.

Q You only fired because you did not want Schwender to fire ? A. Yes.

Q Not as a result of an order given by the captain ? A. The order was just being carried out, and that is why I fired.

Q But you were not ordered to fire yourself ? A. No.

DR. TODSEN: The translation of the last answer was bad. Perhaps Col. Halse would repeat his question ?

THE JUDGE ADVOCATE: "You were not directly ordered to fire". Is that it ?

DR. TODSEN: Yes. Perhaps the shorthandwriter would read that question and answer out ?

(The shorthandwriter reads as follows: "(Q) Not as a result of an order given by the captain ? (A) The order was just being carried out, and that is why I fired").

THE JUDGE ADVOCATE: What do you say he said ?

THE INTERPRETER: "In laufen" means that it was in the course of being carried out.

THE JUDGE ADVOCATE: That is all right -- "in the course of".

DR. TODSEN: I am sorry.

COL. HALSE: You knew there were survivors on the raft, did not you ?  
A. I did not see a raft.

Q You knew there were survivors ? A. Yes, I knew that.

Q And you had spoken to two of them on the U-boat ? A. From one raft I ordered a man to come on the boat, and I spoke to him.

Q Did he get back on to the raft ? A. Yes, he went back there.

Q So there were survivors on the rafts, to your knowledge ? A. Yes.

Q When you went to the captain and said you did not agree with his order what did you say to him ? A. I cannot remember the exact wording any longer.

Q What do you think you said at this stage ? A. I made it clear to the captain that for humane reasons I did not agree with his order.

Q What did you understand his order was ? A. That the pieces of wreckage should be destroyed, in order that from an aeroplane the spot of the sinking might not be located.

Q Did you remind the captain that the destruction of rafts would also mean the death of survivors ? A. I cannot remember the sentences I used.

Q Was the question of killing survivors discussed ? A. No.

Q You had it in your mind when you went to complain, did you not ? A. Yes.

Q Yet you said nothing to the captain about it ? A. It was clear that if we were to shoot at wreckage survivors might be hit, and also that the possibility of survival would be taken from the survivors.

Q Do you remember making a statement on the 3rd June 1944 ? A. Yes.

COL. HALSE: May the witness see his statement?

THE JUDGE ADVOCATE: Yes; it is in English.

COL. HALSE: Will you look at that statement ? (Same handed to witness). That statement is made in English, is it not ? A. Yes.

Q Did you understand English sufficiently ? A. I took the subject at school for nine years.

Q And you understood what was being written down, and before you were sworn to the affidavit you were satisfied that you understood the writing ? A. Yes.

Q In that you said: "A shape resembling a human form was stated to have been sighted from the bridge clinging to a piece of wreckage. Matrosen Obergefreiter Schwender was about to fire his machine gun at this target". A. I assumed so.

Q "I took it from his hand and fired in the general direction of the target indicated". A. Yes.

Q What did that mean ? A. The pieces of wreckage which had been on the port side of the boat; that wreckage which had been on the port side of the boat.

THE JUDGE ADVOCATE: Just look at this statement. You have the German translation. Look at the sentence which begins: "Matrosen Obergefreiter Schwender". Interpreter, will you read to the end?

(The Interpreter reads the relevant passage in German).

THE JUDGE ADVOCATE: (To the witness): What was that objective ?

A. They were the pieces of wreckage which were alongside the port side of the boat.

Q To which a shape resembling a human form was clinging ? A. It was reported from the bridge that there might be such a thing.

COL. HALSE: And you deliberately aimed in that direction ? A. No, that was not translated properly.

Q What was not translated properly ? (The witness's reply is given in German).

THE JUDGE ADVOCATE: "That I shot at it of my own free will".

COL. HALSE: You would rather shoot at it yourself than let Schwender shoot at it ? A. Yes.

Re-examined by MAJOR LIPMAN.

Q Referring still to this statement of yours, lens, if you look at the sentence before the one just quoted you say: "I myself observed no detail". Is that correct ? A. Yes.

Q What did you mean by that ? A. As I had just come up on to the bridge, and before that I had written, my eyes were not quite used to the dark yet, and I could not recognise any details.

Q When you fired the gun at the wreckage did you see any human being clinging to the wreckage ? A. I could not make out any human beings on the piece of wreckage.

Q When the commander said to you, after you had objected to his order: "All traces of sinking must be eliminated", did you understand that as an order or

not ? A. It was an order which had been given.

Q Was anybody on the ship exempted from carrying out the captain's orders ?  
A. No; on board, especially of small ships, the orders are carried out by everybody. For instance, when loading torpedoes everybody lends a hand, or when docking everybody helps.

Q If any other sailor other than Schwender had this gun would you have taken the gun away and fired yourself ? A. No.

THE JUDGE ADVOCATE: Why do you think it was better for the man to whom you had been speaking to have been killed by you than by Schwender ?  
A. The reason was this: I believed that if a person was hit he would be hit by me and not by a man who at that time I considered bad.

Q Why did you feel that way to the man who was hit ? A. Out of a personal feeling.

(The Accused LENZ leaves the place from which he has given his evidence).

MAJOR LERMON: That is the close of the case for Lenz.

THE JUDGE ADVOCATE: You have already opened Schwender's case, have not you ?

DR. PABST: Yes. I call Schwender.

The Accused, Marinestabsarzt Obergefechter WOLFGANG SCHWENDER,  
takes his stand at the place from which the other witnesses have given their evidence, and, having been duly sworn, is examined by DR. PABST through the Interpreter as follows:-

Q What is your name and rank ? A. Leading Seaman Wolfgang Schwender.

Q How old were you at the time of the sinking of the "Peleus" ? A. 19 years.

Q Did you fire after the sinking of the ship ? A. Yes.

Q How long did you fire ? A. I gave one burst of fire, there was a stoppage, and the weapon was then taken over by Kapitanleutnant Lenz, after I had cleared the stoppage.

Q Did you throw any hand grenades ? A. No.

Q What did you aim at ? A. According to my orders I aimed at a piece of wreckage.

Q Why did you shoot ? A. Because I received the order.

Q What was the order ? A. "Schwender, fire on to the wreckage".

Q Who gave you this order ? A. The commanding officer.

Q Did you have to obey this order ? A. Yes.

Q Why ? A. Because I realised that the commanding officer had the right of martial law at sea. If I would not execute his order he would make use of it.

Q Make use of what ? A. Martial law.

Q What for ? A. That he would shoot me.

Q Did you know that the execution of this order was something which was not proper ? A. No.

not ? A. It was an order which had been given.

Q Was anybody on the ship exempted from carrying out the captain's orders ?  
A. No; on board, especially of small ships, the orders are carried out by everybody. For instance, when loading torpedoes everybody lends a hand, or when docking everybody helps.

Q If any other sailor other than Schwender had this gun would you have taken the gun away and fired yourself ? A. No.

THE JUDGE ADVOCATE: Why do you think it was better for the man to whom you had been speaking to have been killed by you than by Schwender ?  
A. The reason was this: I believed that if a person was hit he would be hit by me and not by a man who at that time I considered bad.

Q Why did you feel that way to the man who was hit ? A. Out of a personal feeling.

(The Accused LHMZ leaves the place from which he has given his evidence).

MAJOR LARMON: That is the close of the case for lens.

THE JUDGE ADVOCATE: You have already opened Schwender's case, have not you ?

DR. PARST: Yes. I call Schwender.

The Accused, Marinestabsarzt Obergefreiter WOLFGANG SCHWENDER,  
takes his stand at the place from which the other witnesses have given their evidence, and, having been duly sworn, is examined by DR. PARST through the Interpreter as follows:-

Q What is your name and rank ? A. Leading Seaman Wolfgang Schwender.

Q How old were you at the time of the sinking of the "Peleus" ? A. 19 years.

Q Did you fire after the sinking of the ship ? A. Yes.

Q How long did you fire ? A. I gave one burst of fire, there was a stoppage, and the weapon was then taken over by Kapitanleutnant lens, after I had cleared the stoppage.

Q Did you throw any hand grenades ? A. No.

Q What did you aim at ? A. According to my orders I aimed at a piece of wreckage.

Q Why did you shoot ? A. Because I received the order.

Q What was the order ? A. "Schwender, fire on to the wreckage".

Q Who gave you this order ? A. The commanding officer.

Q Did you have to obey this order ? A. Yes.

Q Why ? A. Because I realised that the commanding officer had the right of martial law at sea. If I could not execute his order he would make use of it.

Q Make use of what ? A. Martial law.

Q What for ? A. That he would shoot me.

Q Did you know that the execution of this order was something which was not proper ? A. No.

Q According to your opinion what sense did this order have ? A. I thought that possibly empty bodies were to be pierced.

Q Did you fire at human beings ? A. No.

Q Are you sure that you only fired at a floating bit of wreckage ? A. Yes.

Q At what distance was that bit of wreckage from you ? A. Not more than 35 metres.

Q Could you recognise the aim distinctively ? A. Yes.

Q Why ? A. I was in the conning tower for some time, and when I came up on the bridge the moon was shining, and I could see exactly what I was firing at.

Q Did you see any human beings ? A. I did not see any human beings.

Q Could you have recognised a human being if he had been sitting on the raft, or hanging on to it ? A. Yes, I would have seen him.

Q Would you also have been shooting at human beings if there had been any ? A. I did not get the order by the commanding officer to do so.

Q That is not an answer to my question. A. No.

Q I will put it again. Would you also have shot at human beings if there had been any ? A. No.

Q On how many patrols against the enemy have you been ? A. That was my first.

Q Was that ship the first one you sunk ? A. Yes.

Q Did the commanding officer give an explanation as to why there was any shooting ? A. To me, none.

Q Did you know that the commanding officer had secret orders, of which you had no possible knowledge ? A. Yes, I knew of that.

Q When you were actually firing were you excited or were you quite calm ? A. I was quite calm.

Q Did you ever have any disciplinary action taken against you ? A. No, not at all.

Q Have you ever disobeyed any superior officer ? A. No, never; not even whilst I was a prisoner of war.

Cross-examined by MR. TODSEN.

Q Could you notice whether any signal lamp was switched on ? A. No, I could not see that because I was busy below deck.

Q Were you on deck after the Greeks had been interrogated ? A. No.

Q But you were firing ? A. Yes.

Q After the interrogation of the Greeks were you below deck or were you on the deck or on the bridge ? A. About midnight I was on the bridge.

Q And before ? A. No.

Cross-examined by MAJOR LEEHON.

Q After Kapitanleutnant Lenz took the gun from you did you see what he fired at ? A. No, I went back on my watch.

Cross-examined by COL. HAIRE.

Q How long were you ordered to fire for ? A. There was no order as to how long.

Q Why did you stop firing without being told to stop by the commander ? A. Because there was a stoppage.

Q Why did not you go on after Lenz had fired ? A. Because I was on watch then.

Q Were you on watch when you were ordered to fire ? A. No, I was then getting ready to go on watch.

Q Did you know that there were survivors from the "Relouis" ? A. No, I did not know anything of them.

Q Were you not on the bridge, or anywhere near the bridge, when Lieutenant Hoffmann and Lieutenant Lenz interrogated one of them ? A. No, I was then in the front part of the ship.

Q Did you aim your machine gun ? A. Yes.

Q At what -- a mass of wreckage or one piece of wreckage ? A. I took one bit of wreckage, a larger piece of wreckage, which I could see particularly well.

Q Did you hear people on the bridge talking about a shape resembling a human form ? A. Yes.

Q Where was that shape resembling a human form ? A. That I do not know.

Q Why was it mentioned on the bridge ? A. Apparently it came from the look-out.

Q Was not it to tell you that there was something to fire at ? A. I only executed the order of the commanding officer.

Q Was that order given before the look-out said there was a body, or after ? A. It was given during the stoppage of the weapon.

Q What was given during the stoppage of the weapon ?

THE JUDGE ADVOCATE: The statement that there was a body.

COL. HAIRE: The statement that there was a body was during the stoppage. Thank you.

DR. PABST: I have no further questions, sir.

(The Accused SCHWANDER leaves the place from which he has given his evidence).

THE JUDGE ADVOCATE: Now I understand that it is desired that Professor Wegner should address the court on matters of law on behalf of all the accused; is that right ?

MAJOR LERMON: That is so.

THE JUDGE ADVOCATE: I think it would be convenient to the court if Professor Wegner did that now, and then each of the speeches for the respective accused could follow it. Will you do that, Professor Wegner ?

PROF. WEGNER: I shall obey your desire if you think it more convenient that I do it now, but I should think it much better to have some time for preparation, I can do so; I have something here.

THE JUDGE ADVOCATE: You mean you would rather make your speech at the end ?

MAJOR LERMON: No. I think the position is that defending counsel would like an adjournment until 10 o'clock tomorrow morning from now.

THE JUDGE ADVOCATE: I see.

PROF. WERNER: I should like to start tomorrow morning. I must admit that I am dead tired now, because I have been working on it all night.

THE JUDGE ADVOCATE: The court wants to continue to 5 o'clock.

PROF. WERNER: I will do so, if you want me to start.

It seems to me that two roads are open to the court in dealing with this case. There has been a decision of the German Supreme Court after the last war, and two U-boat officers were sentenced then for being accessories to manslaughter. The commandant of the U-boat, even though he was accused at the time of the trial, was actually not punished.

That sentence has always been very unpopular among many German soldiers, but also was attacked by French circles and by French people, but it was appreciated very much in England. One of the best books on it was a book by Mullens, "The Leipzig Trials", prefaced by Sir Ernest Pollock.

It seems simple to follow the principles laid down in that sentence of the German Supreme Court. I myself, as I mentioned the other day, defended that unpopular sentence against many German nationals. I pointed out to you that in this particular case we cannot apply some of the very important principles of that sentence now, because conditions of submarine warfare have been radically changed by the development of the air force. That is an argument which my learned friends here will repeat, and will not only repeat, but I think they will drive it home to us.

I am firmly convinced that this first road we cannot follow. Too much has happened since that sentence of our Supreme Court. The psychology of a whole nation, not to say of the world, changed meanwhile. There is something that might deceive us about this change. May I quite honestly tell you -- I told you I am dead tired, but I will do my best to be as rigorous as I can -- what impressed me most in this court is that it seemed to be an ordinary court irrespective of nationalities. To some extent it seemed as if nothing had happened -- as if we simply continued what the German Supreme Court started in 1922, I think. There is something very good about it. The court was calm and polite to the accused, and despite some criticism we discussed the other day I admit that on the whole there were strict rules of procedure; mere passions did not prevail. You will also admit that the soldiers apparently in this court were perhaps not to your mind war criminals such as some other war criminals are. Political passion was not voiced against them in this court -- was not felt against them. In fact, it was said of them: "We absolutely believe that you are of good character".

I was reminded of an experience I had during the war in England or Canada. A great friend of mine, Dr. Bell, Bishop of Chichester, in many articles and letters he wrote, and in many talks we had, always not only admitted but asserted and stressed that German soldiers, in spite of orders, and terrible things of this war, are those who are better liked than other German people are.

THE JUDGE ADVOCATE: Professor, the Court is most ready to receive any help you can give it on any question of international law, but it is not prepared to listen to an account of your experiences with the Bishop of Chichester. Let us hear anything you want to say about international law, but please keep to that.

PROF. WERNER: If I may just state the three points on what I suggested yesterday. I wanted to offer some remarks on the conception of war crimes first.

The legal difference between the situation of the Leipzig trials after the last war and our situation is that now our accused are not before a German court, and we do not exactly know what law we are going to apply to their acts.

What I should like you to keep in mind too -- and this is the only point I wanted to stress on my not very clever remarks in the beginning -- is this: Please do not forget, when thinking now of these people obeying orders, that the psychology of the whole nation had changed. There are not only the problems discussed already in connection with the "Llandovery Castle" case, but there is something new which now leads you to say: "Well, as things turn out we cannot admit the plea of superior command, for several reasons".

Now I will read to you what I composed in better English on those legal questions connected with the conception of war crimes. There is no doubt that international law and criminal law are most seriously challenged by cruelty. Lawyers who want to be loyal to their calling must fight all those who commit crimes against the law of nations and humanity. After the last war, in the beginning of my career as a lawyer and lecturer on criminal law and international law, I myself stressed the gravity of the wrong in all real war crimes in that book I mentioned yesterday, and so on. Then and later on I had to face and defy powerful circles of nationalists. So I may claim that, when now defending persons charged with war crimes, I take the charge very seriously indeed, and am very far from any levity of mind.

On the other hand, no lawyer, English or German, will doubt that those passions which are stirred up by the war and which are only too likely to endanger the soundness of judgment must be avoided, most carefully avoided indeed, when we deal with war crimes and want to give a fair trial to all the accused.

Renault, the great French professor of international law, in a most remarkable essay which he published in 1915, emphasised that just in these cases we have to distinguish between a man being politically responsible and a criminal being guilty of a crime, that is of an act prohibited by the penal law before it was committed. If we mix up criminal and political responsibility, we become ourselves guilty of a very dangerous confusion and injustice.

We cannot call any man a war criminal without his doing wrong and being guilty according to a law enacted before his deed. And, as to the wrong, we have to consider that in war acts which otherwise would be crimes are, in most cases, justified by international law. But here the difficulty comes in that so many rules of international law are rather vague and uncertain. Whereas those rules included in the Hague Regulations are generally quite clear, others are, unfortunately, more than doubtful. In some cases this may even prevent us from pronouncing judgment as to the wrong of a special act. But very often it is the question of guilt that troubles us. Can we make up our mind to find an individual guilty of having violated a rule of international law if the States themselves have always quarrelled about that rule, its meaning and bearing, if they have never really recognised it in anything that might be called a common practice, and hardly know anything precise concerning it? If the States do not know, how can the individual know?

An American writer, Professor Charles G. Fenwick, when dealing with the charges against the German Army for devastations in 1917, resulting from the partial retreat of the German troops, honestly admits: "Owing, however, to the conditional character of the prohibitions of the law, it is difficult in these cases, as in others, to determine whether the act of destruction was in violation of technical law, even in cases where it appeared to the sufferers to be wholly arbitrary and malicious".

I am far from comparing things which must not be compared. But as far as German soldiers of the old school and interment other than, for instance, political are concerned, another sentence from Fenwick's book on international law may be quoted here: "In 1901 the British armies in South Africa interned the civilian population in concentration camps, with the result of serious loss of life." For details Fenwick refers to Spaight on "War Rights on Land".

Practically the individual knows the rules of warfare because they have been transformed into the law of his own country, and he has been taught by his national authorities what his international duties are. Certainly international law ought to be the supreme law of the country; but national pride in all countries over-emphasised the dogma of national sovereignty, tending to deny or even to despise international law.

I will not say that it was despised by our soldiers, who can be any of the soldiers who sit in this room. I told you the psychology of the German nation had changed since 1933, and with regard to the "Mandeville Castle" case, that decision was treated as treason, and people having taken part in it, people having defended it, were, in a way, treated as traitors. There was that tendency, I admit, in our country too, and it was very strong; but I may mention that this evil tendency, against which I have always fought in all my books and essays, is also very strong in some quarters of English and American jurisprudence, especially in that part of it which is represented by Austin and his school.

Most modern writers of that school of thought openly teach an outspoken National jurisprudence, discarding divine as well as public international law. It is by such tendencies that, since the second half of the last century, the way has been paved for the national-socialist contention that there be no universal truth and law, but that, instead of it, the will and command of the nation have a supreme and absolute and totalitarian value, claiming the individual's whole and undivided loyalty, all that the State can enforce.

It was Austin who defined and stressed force as to the essential element of law. All this is utterly wrong; but if a heresy like this prevails even among so many famous lawyers of almost every country, the individual must be excused to some extent for a confusion in his conceptions as to right and wrong.

The questions of right and wrong, and guilty and not guilty, are widely affected by the fact that many violations of international law have been ordered by superiors. Gardner's contention in his book which was published in 1920 that English law does not admit a plea of superior command has been refuted by many writers. It flatly contradicts English military law, in which that plea of superior command plays a very important part, if I am not mistaken in Article 443 Land Warfare, in the Manual of Military Law; and every writer on international law knows the "Caroline" case.

Ever since then it has been a well established rule in international law that an individual forming part of a public force and acting under the authority of his Government is not to be held answerable as a private trespasser or malefactor. What such an individual performed as a "public act, done by persons in Her Majesty's Service, acting in obedience to superior orders, and that the responsibility, if any, rest with Her Majesty's Government". Superior command, as excluding personal responsibility, has also been recognised in the treatment of prisoners of war, also in this war.

In American papers during the war it was suggested that there was a most important difference between the Imperial German Government in 1914-18 and the National-Socialist rulers of 1939; the German Emperor and King of Prussia was undoubtedly the legitimate and constitutional ruler, whereas Hitler was not. This is true; but the average German people are, to a very large extent, excused for their unfortunate mistaking the outcome of revolution-

any violence and political ruse and swindle for something like a national leadership. As the national-socialists, by the peculiar kind of their domestic rule, subdued all opposition at home, they, by the bullying and cunning of their foreign policy, secured the recognition of their administration by the foreign powers abroad.

A letter which I read in an English newspaper in May 1945 impressed me as a noble act just because it was written by a man with a Jewish name, and so probably emanating from the member of a race that was exposed to the wildest cruelty of nazism. In that letter the writer honestly avowed that, had he lived in nationalist Germany, he would have conformed with everything in order to avoid conflicts which might land him in a concentration camp, or even might kill him. This man understood better than a great many other people among his compatriots how almost irresistible and absolutely dominating the fear of something quite uncontrollable was.

Later on I think it was said in the same letter that the foreign powers, including Great Britain and the United States of America, who, on more than one occasion, recognised the Hitler administration, had no such excuse. I am very far from accusing England and America for acquiescing in a state of affairs which could not be altered but by most bloody force. I was myself for peace with all my heart, and on the 3rd September, 1939, I could only feel: "My heart will be broken from this day" -----

THE JUDGE ADVOCATE: Again, please let us keep to the international law. If there is anything more that you want to say about that, please say it, because here we are not concerned with your emotional reactions.

PROF. WERNER: There are questions of wrong and guilt, being important in the defence of war criminals. My colleagues will have to go into it in each single case. Here I will only just mention that it is a grave danger to let one's mind be ruled by any mass mood of the moment. Governments and judges are only too likely to forget in times like this what a great French lawyer in the last war exhorted them never to forget. Renault, then, in 1915, stressed that he could not see how even a defeated Government might afford the extradition of subjects accused of war crimes; it would be the renunciation of all dignity.

If we follow Renault's advice we shall admit that war criminals can only be convicted of such crimes as are crimes according to penal law, the penal code of their country; that is, in our case, the good old code, the Reichstrafgesetzbuch of 1871, which is even older than 1871 because it really is the old Prussian Penal Code of 1851, in which our greatest lawyer, as Minister of Justice, took a leading part; and only such punishments may be inflicted as are provided by that old German law.

I cannot, of course, discuss what is on our minds, I think, most of all. It is impossible now to apply German jurisdiction. A great lawyer in Hamburg told me what is punishable, and he said: "They ought to leave it to us to pronounce right judgment and to punish those who are responsible". It is a humiliation for German lawyers not to be allowed to fulfil a duty which is indeed a German obligation and competence.

Now I offer a legal explanation which refers to the attempt not to admit the plea of superior command, for reasons which were brought forward by Robert Jackson, Judge in the Supreme Court of the United States of America; I am referring to what was said in the Four Power Treaty, published in the beginning of August by the Military Government here in Hamburg on the 9th August.

There three groups of war crimes are discussed -- crimes against the peace, and that group of crimes with which we are concerned here, crimes violating the rules of warfare.

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I must also ask for your patience for some minutes for sentences I have put down on crimes against the peace, because the arguments brought forward by Robert Jackson deal just with these two things. The third group I do not refer to because we are not concerned with it, fortunately, and which I condemn more than anybody else.

Crimes against the Peace: Such is the beginning of the list. Planning, preparing and decking an aggressive war or a war that starts by violating international treaties, conventions, understandings or customs. This appears as the principal crime.

In so comprehensive a conception there is something that appeals to our emotional way of thinking, and if there be still any hesitation it is very well traced and explained by Robert Jackson in his official report of July 7th, 1945. He quotes and declines those ideas which may be familiar to us as princeps legibus solutus est, and, "The King can do no wrong". He misunderstands, as so many do, the old word of "By the Grace of God", which is indeed an expression of humility, as Kaiser Wilhelm II emphasised in the book he published only a few years before his death on "Kingship in old Mesopotamia", and as his friend Heinrich Schneider wrote in all his books, in that matchless beauty of his wonderful language.

It may be remarked, by the way, that also the principle "The King can do no wrong" allows an interpretation differing widely from popular understanding or misunderstanding. It is true that a great American lawyer, my learned friend Rixen Borchard, of Yale University, has fought against that principle of English law for about 30 years. During the war he sent me the great symposium "Governmental liability in tort". But even there it is admitted that the sentence "The King can do no wrong" has also been the basis of the rule of law, of the Rechtsstaat. This is a contention which I have stressed in two of my books.

Robert Jackson now touches in this connection the very difficult and deep problem of just and unjust wars. He states correctly that international law in the nineteenth and the beginning of the twentieth century has recognised the right to wage war on the part of Sovereign States. A Government making use of this right belonging to Sovereignty did not at all commit a crime, not even a wrong. Jackson sees in all that a turning away from the teaching of Hugo Grotius, whom he calls the father of international law. Grotius, he says, distinguished the just war from the unjust war.

It is true that we find in Hugo Grotius' De jure belli ac pacis libri tres, published in 1625, still this distinction; but he by no means invented the doctrine of just and unjust wars. His teaching is neither the starting point nor the culmination of it. On the contrary, it is the very end, the conclusion of a long and glorious tradition that is medieval and, in what remains essentially true, Catholic.

St. Augustine, in his great and comprehensive book "De Civitate Dei", had laid the foundation, partly perhaps by reforming and Christianising the ancient and classical conceptions of Roman law on just and unjust wars. He clung to the great principle justitia fundamentum regnum est. War was only admitted as an instrument of justice. St. Augustine's teaching is the starting point of an unbroken chain of tradition culminating in Hostiensis' Summa Aurea.

THE JUDGE ADVOCATE: Professor Wegner, you have obviously taken a great deal of trouble about this, and of course the court very much appreciates it; but if you have found any authority which justifies the killing of survivors of a sunken ship when they are in the water, will you try and come to it quickly, because that is what we want, you know.

PROF. WEGNER: I have told you that I am very tired and had some hesitation in

addressing you now; but what I have prepared here is going to explain why Mr. Jackson does not want to admit at least the plea of superior command. I shall seek —

THE JUDGE ADVOCATE: You have dealt with that, have not you?

PROF. WEGNER: No, I am going to deal with it.

THE JUDGE ADVOCATE: All right; you come to that.

PROF. WEGNER: Robert Jackson, like many American and English, is afraid that guilty persons may evade responsibility and escape punishment by a double defence: Firstly, the rulers by claiming the right of Sovereignty; secondly, the subjects by a plea of superior command. That is his apprehension, but our argumentation cannot be blamed for such double dealing. It is true that we do not discard and deliberately ignore and disregard an historic development of six centuries during which the dogma of sovereignty has been established; but we deny any claim of national-socialist leaders to be entitled to legitimate cover —, and whatever may be the dangers and drawbacks of sovereignty, it has been legitimate in its origin and essence. We are prepared to examine any objective and dispassionate charge of treason against those people.

The second group of war crimes in the Four Power Treaty are violations of the rules of warfare. Oppenheim, edited by H. Lauterpacht, in his book on International Law quoted later, gives a long list of such violations; and he too deals at great length with the influence that the order, the command of a superior may have in this connection.

As to the plea of superior command, we have already talked about the "Caroline" case in which it is acknowledged by British authorities as a matter of course. Robert Jackson too will admit the plea of superior command to some extent. So, practically, it is but a question of distinguishing between cases where the plea of superior command takes away all guilt and own responsibility, and other cases where it diminishes guilt, or where it even is irrelevant.

110 If the command, the order, be wrong from a legal point of view, he who obeys commits a wrong. M.E. Mayer stressed this view perhaps more than any other lawyer:<sup>10</sup> "Doing what has been ordered in violation of law is under all circumstances a wrong, an unlawful action." That is what he says, and: 111 "<sup>11</sup> The principles of the Rechtsstaat require us indeed to stick to what has been said in the Reichsbeamtengesets, paragraph 13: 'Each Reich's-official is responsible for his official acts being lawful'." <sup>12</sup> //

It is true that there was no agreement, but rather a confused controversy about this problem in literature on Criminal Law. For instance Professor Helmuth Mayer thinks that there is also a binding force of the superior command even where it is wrong; others<sup>13</sup> of us go in nearly the same direction as M.E. Mayer, for example Heimberger and Robert von Hippel.

If judges want to impress a mixed crowd by real justice, they must stick to the sacred rules of the Rechtsstaat when dealing with war crimes and war criminals, and most especially with those who are erroneously accused. As the basis of any sentence, of any punishment, the Rechtsstaat requires a Tatbestand. This word means much more than the actual facts of the case. That is not a perfect translation, not rendering completely into English what the German student of criminal law imagines and thinks when he pronounced the word "Tatbestand".<sup>14</sup> //

Albrecht Mendelssohn Bartholdy once, when writing on International Penal Law admonished us never to forget the Tatbestand, which, in this connection, is so easily forgotten. I called attention to this admonition and exhortation to think of the most simple and elemental securities of legal and juridical technique in one of my essays which I contributed in 1930.

The first pernicious reform of criminal law that the National-socialists achieved was the abolition of the old and just law: Nullum crimen sine lege, nulla poena sine lege. We, as lawyers, have the great task and mission to prevent people of our time from reacting against National-socialism by imitating without knowing that they do so its worst methods. It is imitating National-socialist methods when we neglect to state legally and correctly the actual facts of the case according to the doctrine of the Tatbestand. It is imitating those evil methods when we judge the accused by a law which was enacted after he had committed his act and which he could not know <sup>114</sup> while he was acting. If whole nations and States wavered, for example, as to the question of just and unjust wars, we must not suppose the accused individual to know exactly and firmly that what he did was wrong, that he had a guilty knowledge of a law, or rather legal idea, which then was not yet lex lata, but perhaps lex ferenda.

Last, not least, criminal procedure too must be according to the standard and high ideal of the Rechtstaat -- but this I drew attention to yesterday.

John Westlake once said: "It may be doubted whether, latterly, the popular feeling thus stirred has always operated in the direction of humanity. In proportion as really national wars have taken the place of wars of dynastic or personal ambition, there has tended to grow up, on the conquering side in any struggle, a public impatience of all laws which might impose restraints on the fullest measure of success, which was not felt by subjects on behalf of the schemes of their rulers".

A short time before revolutionary developments made peaceful progress impossible, there were hopeful indications of a change of public opinion in the whole world on German warfare during the first World War. The world began to understand Germany's situation much better and to do our country more justice. I pointed that out in my contribution published in 1932 on the change of world opinion on German war leadership.

I have no doubt that also the passions of today will pass and will be replaced by calmer and more peaceful judgment on war crimes and alleged German war crimes. Then he who now is yielding to the feeling and mood of the moment, or even to the mob, will be ashamed.

Sir, I am perfectly sure that calmer judgment will, for instance, prevail in the case of Captain Kok. I am perfectly sure that you, for instance, have been impressed by his personality. When in one point I tried to correct the very good work my learned friend, Dr. Todsen, had done in his cross-examination, I wanted to make it clear to you that Mr Kok is quite honest in claiming -----

THE JUDGE ADVOCATE: That is not a matter of international law, is it?

PROF. WEGNER: He acted for military and technical reasons only -----

THE JUDGE ADVOCATE: Wait a minute. This is a matter that you can leave to defending counsel. I understood you were here to address the court on any relevant question of international law?

PROF. WEGNER: Yes.

THE JUDGE ADVOCATE: The court are not prepared to listen to you on the facts of the individual cases of the accused. They will be dealt with by their respective advocates. If there is any more you want to say about the law, of course, the court will hear it.

PROF. WEGNER: His defence is emergency and necessity, which you heard about yesterday, and I am afraid that perhaps it was not enough that Westlake does not accept the definition of the "Caroline" case to its whole extent. The definition was that it was necessary for the defence to show a necessity of

self-defence instant, overwhelming, leaving no choice of means and no moment for deliberation. This was a correct statement of the law except so far as concerns the emergency leaving no moment for deliberation, which is an unnecessary condition if the emergency is such that deliberation can only confirm the propriety of the act of self-preservation.

THE JUDGE ADVOCATE: Yes, you developed that yesterday, did not you, and the court will consider that point.

PROF. WEGNER: I think it has been proved, in spite of all, that the propriety of the act -- its necessity has been proved; and that bit, of course, I leave to Dr. Todsen to point out to you when he comes to dwell on the facts.

If I may say this to you: I wanted to make you understand what type of man Mr Kok is. I cannot imagine that anybody will doubt the relevance of superior orders, and I cannot imagine that anyone will doubt with the great stress of superior orders that the danger of disobeying them was much greater, and in this case was quite different from whatever it has been. I ask you not simply to apply the principles of the "Llandovery Castle" case and the decision of the Supreme Court then; I ask you not to forget that in the minds of these people everything connected with superior orders had been obscured of legal conceptions of former years. They were under the idea that they simply had to obey. Compared with old military law to some extent it was something new. If you apply the rules of the "Llandovery Castle" case as if nothing had happened at all you will not be able to do justice to these men.

You must please take into consideration that there was nothing so unpopular and so hated as, for instance, that sentence of the Rechtsstaat, and that a new spirit had become dominating in the minds of people. It seems all very well to have a very dignified and nice trial like this as if nothing had happened, but please take into consideration those tremendous changes.

I am tired, because I had to do this during the night for you. I was not up to my task, I am sorry to say, but I hope I have not taken up your time without being able to help you. I can only appeal to you not to apply an old law to a world which was in a revolutionary chaos -- to minds which had been changed by the irresistible force of new events.

THE JUDGE ADVOCATE: Thank you.

THE PRESIDENT: The court will adjourn until 10 a.m. tomorrow morning.

(At 1700 hours the court is adjourned  
until 1000 hours tomorrow morning).